(1)

No.: 061607 MAY 31 2007

OFFICE OF THE CLERK

In The

Supreme Court of the United States

ABDELHADI ABUSHEIKH,
(Alien No.: 043-247-552)

Petitioner,

V.

ALBERTO GONZALES, ATTORNEY GENERAL; MICHAEL GARCIA, ASSISTANCE SECRETARY DEPARTMENT OF HOMELAND SECURITY-BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT; JAMES JOHNSTON, DISTRICT DIRECTOR BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT; BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Aslan T. Soobzokov, Esq.
Attorney for Petitioner
1029 Main Street
P.O. Box 885
Paterson, New Jersey 07533
Phone: (973) 279-1622

QUESTIONS PRESENTED

The Third Circuit Court of Appeals rendered a decision in this case which is inconsistent with our Constitutional principles of Equal Protection and Due Process.

The Honorable Court below did not address the relief sought by a stateless Palestinian national who cannot comply with an Order of Deportation because no country will accept him. Jordan and Israel will not issue him a travel document to depart the United States. He arrived in the United States 18 years ago with an Israeli travel permit which they refuse to renew. The Jordanians also refuse to issue Petitioner with a passport or a permit to travel eventhough he was born in Jordan. Since he lived in the occupied territory of the West Bank they will not recognize him as Jordanian.

The Court below avoided providing a remedy to the complex nature in this case. Further, their (Third Circuit) analysis in denying relief cited cases which are not relevant to the issue brought before the Court. They misunderstood the facts which is evident by virtue of the language contained in their analysis.

Three questions are presented:

1. Does the Equal Protection clause apply to undocumented individuals particularly where these individuals are unable to comply with a Deportation Order and are stateless?

2. Where a stateless undocumented individual under an order of deportation, cannot physically depart the United States, should Federal Courts intercede under the Equal Protection Clause and grant protection to that individual(s) despite the restrictions under the Immigration and Nationality Act?

3. Is the Due Process Clause violated where a undocumented person, without authority to travel outside the United States thereby violating an Order of Deportation and revocation of bond, subject to any relief that is not addressed within the Immigration and Nationality Act.

LIST OF PARTIES

The parties below are listed in the caption.

CORPORATE DISCLOSURE STATEMENT

Not applicable.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
LIST OF PARTIES.....	ii
CORPORATE DISCLOSURE STATEMENT...	ii
TABLE OF CONTENTS.....	iii
TABLE OF CITED AUTHORITIES.....	v
TABLE OF APPENDICES.....	vi
OPINION BELOW.....	1
STATEMENT OF JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED THE IMMIGRATION & NATIONALITY ACT..	2
STATEMENT OF THE CASE.	3
REASONS FOR ALLOWANCE OF THE WRIT..	5
I. REVIEW IS WARRANTED TO RESOLVE A CONFLICT ON THE DETERMINATION OF THE STATUS OF A STATELESS UNDOCUMENTED INDIVIDUAL UNABLE TO DEPART THE UNITED STATES.....	7
II. REVIEW IS WARRANTED AND NECESSARY TO RESOLVE THE ISSUE OF WHETHER A STATELESS INDIVIDUAL ORDERED DEPORTED AND BEING	

UNABLE TO DEPART CAN REOPEN IMMIGRATION PROCEEDINGS..... 9

III. REVIEW IS NECESSARY TO RESOLVE AN IMPORTANT DISPUTE CONCERNING THE PROPER TREATMENT OF STATELESS INDIVIDUALS WHERE THE LAW IS SILENT..... 10

TABLE OF CITED AUTHORITIES

Page

Cases:

Abdel-Muhti v. Ashcroft,
314 F. Supp. 2d. 418 (M.D.P.A. 2004)..... 8

Panjwani v. Ashcroft,
401 F. 3d. 626 (5th Cir. 2005)..... 8

Yick Wo v. Hopkins,
118 U.S. 356 (1986)..... 7

Zadvydas v. Davis,
533 U.S. 678 (2001)..... 7, 8

TABLE OF APPENDICES

Page

Appendix A – Order, Dated March 5, 2007, Of The United States Court Of Appeals For The Third Circuit And Denying Petition For Rehearing 1a

Appendix B – Judgment And Opinion, Dated January 31, 2007, Of The United States Court Of Appeals For The Third Circuit And Denying Petition For Review 3a

Appendix C – Order, Dated September 30, 2005, Of The United States District Court Of New Jersey 7a

Appendix D – Order, Dated April 6, 2005, Of The United States District Court Of New Jersey Denying Petition For A Stay of Removal 10a

Appendix E – Order, Dated March 31, 2005, Of The Board Of Immigration Appeals Denying Second Motion To Reopen Decision 12a

Appendix F – Order, Dated January 13, 2005, Of The Board Of Immigration Appeals Denying First Motion To Reopen Decision By The BIA 13a

Appendix G – Order, Dated September 17, 2004, Of The Board Of Immigration Appeals Affirming The Decision Below..... 15a

Appendix H – Order and Oral Decision Of the Immigration Judge, Dated February 21, 2003, Of The United States Immigration Court Of Newark, New Jersey..... 17a

Appendix I – Letter From The Embassy of Jordan, Dated February 9, 2005, Denying Mr. Abusheikh Abdelhadi A Travel Document..... 29a

OPINION BELOW

An Immigration judge denied Petitioner's request for relief from deportation by way of cancellation of removal (under § 240 of the Act) primarily because Petitioner did not file taxes while he lived as an overstay in the United States. The Immigration Court was not receptive to the fact that the Petitioner could not lawfully work in the United States. The Petitioner's family were not placed under removal proceedings. The Immigration judge designated Jordan, and in the alternative, Israel, as countries of removal. The Court also granted Petitioner voluntary departure upon posting of an additional bond. The Petitioner was a West Bank resident and is a Palestinian national.

When the Petitioner sought travel documents from both Israel and Jordan he was denied. The Israeli's consider him a Jordanian, while Jordan considers him to be an Israeli resident, primarily based on the length of his residency there. Due to these factors, motions to reopen immigration proceedings were filed and denied by both the Immigration judge and the Board of Immigration Appeals, claiming they had no jurisdiction.

A petition was filed in District Court of the Third Circuit but was transferred to the Third Circuit Court of Appeals following enactment of § 106 (c) of the Real ID Act of 2005, as a petition for review of the BIA's decision under 8 U.S.C. § 1252 (a). The opinion rendered by the Third Circuit Court of Appeals did not address the issues presented by the Petitioner in the petition filed, or even comment on the lack of a review on the part of the BIA to the Immigration judge's decision on the jurisdiction, and motion to reopen issues.

STATEMENT OF JURISDICTION

Constitutional protections are being denied to the Petitioner based on his ethnicity and due to diplomatic and political circumstances affecting and being beyond the control of a common individual.

CONSTITUTIONAL AND STATURORY PROVISIONS INVOLVED

THE IMMIGRATION & NATIONALITY ACT

The entire Immigration and Nationality Act does not address the question of what does an undocumented individual, who is considered stateless, do when they can not return to their homeland because of international, political, and diplomatic disputes, and as the result the individual consequently violates an order of deportation.

STATEMENT OF THE CASE

Petitioner Abdelhadi Abusheikh is a Palestinian national who cannot comply with an order of deportation entered by an immigration judge on February 21, 2003 because of his inability to secure travel documents from the countries of Israel and Jordan, the countries designated on the deportation order. Due to historical circumstances the Petitioner is tied to those countries.

When the Petitioner was a child his family was living in Amman, Jordan then they moved to the West Bank. While Petitioner was living in that area, the 1967 war erupted which resulted in Israel occupying or controlling the West Bank region of Jordan. The Petitioner grew up in the West Bank while under Israeli authority over the region.

On October 3, 1989 the Petitioner entered the United States with an entry visa stamped on his Israeli travel permit issued to him in Israel. Since his arrival he has not departed the United States. The Petitioner's wife and children eventually came to the United States as well, all under Israeli travel permits. The Israeli authority does not issue passports to Palestinians, only travel permits.

The Petitioner was arrested by Bureau of Immigration and Customs Enforcement (ICE) on March 14, 2002 and charged under the Immigration and Nationality Act, under section 237 (a)(i)(b) as being an overstay. He posted a $2, 700 Bond and was released from custody. Due to his length of residing in the United States, the Petitioner sought relief from deportation via cancellation of removal under Section 240 of the Act.

The Immigration judge denied the Petitioner's application for relief by way of Cancellation of Removal from the United States, primarily because the Petitioner did not file taxes annually, eventhough the Petitioner could not get legal permission to work while living in the United States. The Court was aware that the Petitioner had no criminal record, but looked beyond this equity and denied relief.

Subsequent to denial of his appeal by the BIA the petitioner attempted to procure travel documents from both Jordan and Israel but they refused to issue him any travel documents. The Jordanians provided written confirmation of their denial to issue travel permission. The Israelis refused to provide any written proof despite repeated requests for such proof by the Petitioner.

Due to the inability of the Petitioner to depart the United States without travel authorization, a motion to Reopen Removal proceedings was filed with both the Immigration judge and the BIA, both denied relief. They claimed that they lacked jurisdiction without providing a written opinion in support of their denial.

Upon making application to the Third Circuit Court, the petition was transferred to the Third Court of Appeals pursuant to the provisions of the Real ID Act. The opinion of the court below did not address the issues raised in the petition that was filed in District Court. The Court referred to cases in their opinion which did not address the issues at hand. The Court referred to facts in their opinion that were clearly misunderstood by the Court which did not permit the Court from accurately addressing the issues.

The first sentence of the opinion by the Court below indicates that the petition was due to "a review of the application for cancellation of removal". This is plainly incorrect. The issue was related directly to the Petitioner's inability to comply with the deportation order and the fact that he has been sanctioned by the revoking of two bonds he posted. Since he could not depart the United States and comply with the order, he was compelled to file a motion to reopen. The Court missed this critical factor. The Court was also factually incorrect when it stated in its opinion that "following his detention a petition for a stay of removal and a writ of Habeas Corpus was filed.....". (P. 3). This did not occur as well. This further supports the contention that the Court did not understand the issues and fact of this case.

At this time the Petitioner has literally no recourse but to pray that this Honorable Court will grant a forum to hear his plight and request for relief.

The Petitioner filed the notice of appeal on November 22, 2005. The Third Circuit's decision was entered on January 31, 2007.

The Petitioner timely filed a petition for panel rehearing with the Third Circuit Court of Appeals which was denied on March 5, 2007. This petition for request for Certiorari followed.

REASONS FOR ALLOWANCE OF THE WRIT

The Petitioner acted in accordance with the decision of the Immigration judge and complied with the law. He was granted voluntary departure which means the Petitioner can depart the United States on his own accord within a specified time frame. He posted two bonds which would be relinquished upon evidence that Petitioner departed the United States.

When the Petitioner sought to get a travel authorization from Israel he was denied. When he tried to get travel permission from Jordan he was denied as well. Since he did not depart from the United States timely, the Respondents have confiscated the bonds he was required to post, eventhough the Petitioner filed motions to reopen deportation proceedings indicating the reasons for his inability to comply with the deportation order and depart the United States.

Due process has been violated as no tribunal heard argument on the merits of Petitioner's inability to depart the United States. The Real ID Act dispensed with a hearing before a District Court judge or Federal magistrate on the facts of the Petitioner's case. The Third Circuit Court of Appeals in an inartful manner disposed of the prayer for relief filed by the Petitioner. This Honorable Court must act to protect the Petitioner from any further harm and violation of his constitutional rights.

There has been no Federal Judicial Review on the facts of this case. The Third Circuit Court of Appeals applied incorrect facts from the instant case to cited cases which resulted in error as is evident in their opinion.

Review by this Honorable Court is necessary to ensure Petitioner is afforded due process which has not occurred in this case.

I. REVIEW IS WARRANTED TO RESOLVE A CONFLICT ON THE DETERMINATION OF THE STATUS OF A STATELESS UNDOCUMENTED INDIVIDUAL UNABLE TO DEPART THE UNITED STATES.

A stateless individual ordered removed from the United States has no place to go. No judicial body has accepted this premise in the opinions they rendered in this case. The contention of the Petitioner is supported by evidence submitted in support thereof.

The United States constitution applies to undocumented individuals as well as to all citizens and residents of the United States. *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1986). This protection extends to stateless individuals as well. The concept of due process requires that all individuals under the protection of the constitution will be provided with a fair and impartial hearing. The Petitioner has been denied this right on the issue of his inability to depart the United States, based on the facts and circumstances of this case.

The Petition filed, and the supporting briefs filed in support thereof, were not remotely addressed by the Third Circuit Court of Appeals in their decision.

There are no statutes contained within the Immigration and Nationality Act which address circumstances in handling an individual in the Petitioner's situation. When this issue was presented to the Executive Office for Immigration Review they disclaimed jurisdiction. This was the same result with Immigration Court. They in essence push the matter of stateless individuals over to the Federal Court to resolve.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the decision provides that detention by ICE of undocumented individuals is not an everlasting phenomenon. The case held that the Respondents cannot hold a person beyond a six month period to effectuate their removal from the United States. The difference with the matter at bar is that the Petitioner has given the Respondents evidence that he cannot return to his native land. They have not refuted this evidence. The

Respondents were well aware of the Petitioners circumstances for at least two years now. That time period exceed the time frame discussed as being acceptable in *Zadvydas*. Confiscation of the bonds posted by the Petitioner is not consistent with holding of *Zadvydas*. The Respondent's actions have become penal in nature to the Petitioner.

The refusal by the Immigration judge and the Board of Immigration Appeals to reopen the deportation proceedings for the Petitioner was an abuse of discretion. *Panjwani v. Ashcroft*, 401 F. 3d. 626, 628-632 (5th Cir. 2005). The Petitioner provided a certification on the impossibility of getting a travel document from Israel. The Petitioner's certification contains a letter from the Jordanian Embassy as well as evidence that Israel also refused Petitioners request for travel documents. Due process requires further review by a Court under these new and unique circumstances. Under these facts denial by the Court(s) below was a clear abuse of discretion.

The Middle District of Pennsylvania was confronted with a case that had similar facts, in *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d. 418, 424 (M.D.P.A. 2004), the Court considered a case where a Palestinian could not return to Israel or Jordan. They were the only countries as well that could issue him travel documents. Since neither country would accept his return, the Court granted Mr. Abdel-Muhti's release from custody and granted him the right to live and work in the United States. The facts in Abdel-Muhti's case parallel the Petitioner's case because they both came to America while living in the occupied territories. Both were born while living on land that was Jordanian. Since they come from the occupied territories they cannot seek refuge in either country, both nations simply don't want Palestinians to live in their countries.

It is respectfully suggested that these factors show that a review should be warranted here. This case is particularly significant because there has been no hearing on the merits of the Petitioner's claim on his inability to depart the United States.

II. REVIEW IS WARRANTED AND NECESSARY TO RESOLVE THE ISSUE OF WHETHER A STATELESS INDIVIDUAL ORDERED DEPORTED AND BEING UNABLE TO DEPART CAN REOPEN IMMIGRATION PROCEEDINGS.

After being informed that Petitioner could not acquire a travel permit from either of the designated countries on the deportation order, a motion to reopen was filed. A motion was filed to reopen with both Immigration Court and with the Board of Immigration Appeals. Both Courts denied the motion claiming (without opinion) that their Court lacked jurisdiction.

Immigration Court should have addressed the status of stateless individuals who fall under Petitioner circumstances. The outcome of that process is not completed upon issuance of a deportation order. An extension thereto of the Court's functions is the departure of the individual from the United States, and where that is impossible, the judge who issued the order should review alternatives. It would only be fair and in comport with the due process clause of the Fifth Amendment to the United States constitution. Here the Immigration Court below avoids the issues completely claiming lack of "jurisdiction".

Upon being informed that the Petitioner could not depart the United States because of the stateless factor, the motion judge should have Sua Sponte interviewed. 8 C.F. R. § 1003.2 (a). They clearly have the authority to intervene but decided not to.

III. REVIEW IS NECESSARY TO RESOLVE AN IMPORTANT DISPUTE CONCERNING THE PROPER TREATMENT OF STATELESS INDIVIDUALS WHERE THE LAW IS SILENT.

We as a nation are a land of immigrants who came from all parts of the world. We have always been sensitive to the rights of immigrants. Numerous bills have been passed to accommodate an influx of displaced individuals. This petition does not relate to an entire group of people, only for one individual. This individual is now considered stateless because of a state of war between Israel and Jordan.

The Petitioner is also a Palestinian which further complicates his situation in the eyes of both countries. The Petitioner has not been afforded a hearing on the merits of his inability to depart the United States. This situation developed only after the Petitioner found out that he could not get travel documents to depart the United States.

Since the Immigration Courts did not permit motions to reopen to be filed, relief was sought in Federal Court. The Third Court of Appeals did not accurately analyze this case. We have no option but to present these facts before this Honorable Court.

We ask this Honorable Court to permit the Petitioner with an opportunity, as dictated by fundamental due process to have his case reviewed by a Federal Court.

CONCLUSION

For all the foregoing reasons, petitioners respectfully request that the Supreme Court grant review of this matter.

Dated: May 29, 2007

Respectfully submitted,

Aslan T. Soobzokov
Attorney For Petitioner
1029 Main Street/P.O. Box 885
Paterson, New Jersey 07533

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-5 130

ABDELHADI ABUSHEIKH,

Petitioner

v.

ATTORNEY GENERAL OF THE UNITED STATES,

Respondent

On Petition for Review of an Order of
The Board of Immigration Appeals (No. A72-433-013)
Initially docketed as an
Appeal from the United States District Court
for the District of New Jersey prior to the
enactment of the Real ID Act
(Civ. No. 05-cv.-01819)
District Judge: Honorable Dennis M. Cavanaugh

Submitted Under Third Circuit LAR 34.1(a)
September 28, 2006
Before: McKEE, and AMBRO, Circuit Judges
and RESTANI,* Chief Judge

JUDGMENT

This cause came on to be heard on the record before the Board of Immigration Appeals and was submitted pursuant to Third Circuit LAR 34.1(a) on September 28, 2006.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the petition for review dated November 22, 2005 is denied. All of the above in accordance with the opinion of this Court.

---

* Honorable Jane A. Restani, Chief Judge, United States Court of International Trade, sitting by designation.

ATTEST:

/s/ Marcia M. Waldron
Clerk

Dated: January 31, 2007

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-5 130

ABDELHADI ABUSHEIKH,

Petitioner

v.

ATTORNEY GENERAL OF THE UNITED STATES,

Respondent

On Petition for Review of an Order of
The Board of Immigration Appeals (No. A72-433-013)
Initially docketed as an
Appeal from the United States District Court
for the District of New Jersey prior to the
enactment of the Real ID Act
(Civ. No. 05-cv-01819)
District Judge: Honorable Dennis M. Cavanaugh

Submitted Under Third Circuit LAR 34.1(a)
September 28, 2006
Before: McKEE, and AMBRO, Circuit Judges
and RESTANI,* Chief Judge
(Opinion filed January 31, 2007)

---

*Honorable Jane A. Restani, Chief Judge, United States Court of International Trade, sitting by designation.

OPINION

AMBRO, Circuit Judge

Abdelhadi Abusheikh petitions for review of an order issued by the Board of Immigration Appeals ("BIA") affirming the denial of his application for cancellation of removal. We have jurisdiction to consider the petition under Section 242(b) of the Immigration and Nationality Act ("INA"), codified at 8 U.S.C. § 1252(b). For the reasons set forth below, we deny the petition.

I.

We highlight only those facts that are pertinent to our analysis. Abusheikh is a native and citizen of Jordan who moved to the West Bank when he was a child, at a time when the land was under Jordanian control. Following the Six-Day War in 1967, this territory was under the control of Israel. Abusheikh came to the United States with an Israeli travel document as a non-immigrant visitor on October 3, 1989, and was authorized to stay until April 3, 1990. However, he overstayed his visa, and in 2002 he was arrested and charged with removal. Abusheikh conceded the charge of removal and was released after posting bond. He proceeded to apply for cancellation of removal under 8 U.S.C. § 1229b(b)(1).

After a hearing on the merits, the immigration judge ("IJ") denied Abusheikh's petition, designated Jordan and Israel as removal countries, and granted him voluntary departure. In response to Abusheikh's allegation that he would not be able to return to Jordan because of his status as a Palestinian, the IJ noted that he failed to provide any documentation to support this claim. In addition, the IJ concluded that any hardship Abusheikh would face if he had to return to the West Bank would not rise to a level requiring cancellation of removal. *See* 8 U.S.C. § 1229b(b)(1) (governing cancellation of removal for non-permanent residents).

Abusheikh appealed the IJ's decision and the BIA affirmed without opinion. He then applied for travel documents with the Jordanian and Israeli authorities. Before receiving a response, he filed a motion with the BIA to reopen his case, expressing concern that he would not be accepted by either of the removal countries designated by the IJ. The BIA denied this motion, stating that it did not have the authority to cancel removal on the ground that no country was willing to accept Abusheikh. After being refused travel documents by the Jordanian embassy, but prior to having received word from the Israeli embassy, Abusheikh filed yet another motion to reopen, which was denied by the BIA for lack of jurisdiction because his removal order became final upon his failure to depart voluntarily.

Following his detention, Abusheikh filed a petition for a stay of removal and a writ of *habeas corpus* under 28 U.S.C. § 2241 with the United States District Court for the District of New Jersey, which transferred his claim (now treated as a petition for review) to us pursuant to 8 U.S.C. § 1252(b)(2).[1]

II.

Under 8 *U.S.C.* § 1252(a)(2)(B)(I), we do not have jurisdiction to review a discretionary decision to deny cancellation of removal under § 1229b. However, we do retain jurisdiction to review "constitutional claims or questions of law" notwithstanding this jurisdictional limit. *See* 8 U.S.C. § 1252(a)(2)(D); *Mendez-R eyes v. Att'y Gen.*,

428 F.3d 187, 189 (3dCir. 2005).

Abusheikh argues that the IJ's refusal to cancel his removal has resulted in unequal treatment on the basis of national origin in violation of the Fifth and Fourteenth Amendments because, as a stateless Palestinian, he can neither depart the United States nor work or live here legally. This claim fails. To prove an equal protection violation, Abusheikh must first demonstrate "disparate treatment of different groups." *DeSousa v. Reno,* 190 F.3d 175, 184 (3d Cir. 1999). However, Abusheikh fails to establish the basis for such a claim. In addition, to the extent that Abusheikh contends that

we should set aside his order of removal because he purports to be stateless, we note that statelessness alone is an insufficient basis on which to grant a petition for asylum or withholding of removal without additional factors present. *See, e.g., Ahmed v. Ashcroft,* 341 F.3d 214, 218 (3d Cir. 2003).

Accordingly, we deny Abusheikh's petition for review.

---

1 Abusheikh erroneously contends that we have jurisdiction to consider his petition under 28 U.S.C. § 2241. However, the relief he requests—specifically, to be permitted to remain in the United States—is not encompassed by that statute. Rather, 8 U.S.C. § 1252(b)(2) clarifies that a petition for review to the courts of appeals is the exclusive means of review of an administrative order of removal.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ABDELH.ADI ABUSHEIKH, : Hon. Dennis M Cavanaugh

Petitioner, : ORDER TO SHOW CAUSE

v. :Civil Action No. 05-CV-1819 (DMC)

ALBERTO GONZALES, :
Attorney General; MICHAEL :
GARCIA, Assistant Secretary :
of Homeland Security Bureau
of Immigration and Customs :
Enforcement; JAMES :
JOHNSTON. District Director- :
Bureau of immigration and :
Customs Enforcement; :
BUREAU OF IMMIGRATION :
AND CUSTOMS :
ENFORCEMENT, :

Respondent. :

This matter coming before the Court upon motion by Petitioner Abdelhadi Abusheikh ("Petitioner") for stay of removal and writ of habeas corpus pursuant to 28 U.S.C § 2255; and the Petition having been filed before May 11. 2005, the effective date of the REAL ID ACT 2005, Pub. L. No. 109-13, 119 Stat. 231 (May 11, 2005); and the Court having carefully considered the record before it;

And it appearing that:

1. The petitioner is an immigration detainee who challenges his removal on constitutional grounds and who seeks release from detention pending outcome of his petition for relief. He contends that his continued detention violates due process and equal protection as guaranteed by the United States Constitution. It appears from the petition that the removal proceedings occurred in Newark, New Jersey.

2. On April 6, 2005, this Court denied Petitioner's application for stay of removal on the grounds that this Court may not order a stay of an alien's removal pending consideration of any claim with respect to voluntary departure pursuant to 8 U.S.C.A. § 1229(c)(f).

3. Pursuant to Section 106 (c) of the Real ID Act of 2005;

If an alien's case, brought under section 2241 of title 28, United States Code and challenging a final administrative order of removal, deportation, or exclusion, is *pending in a district court on the date of the enactment of this division*, then the district court shall transfer the case (or the part of the case that challenges the order of removal, deportation, or exclusion) to the court of appeals for the circuit in which a petition for review could have been properly filed under section 242(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1252), as amended by this section, or under section 309(c)(4)(D) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note). The court of appeals shall treat the transferred case as if it had been filed pursuant to a petition for review under such section 242, except that subsection (b)(1) of such section shall not apply.

119 Stat. 231, 311.

The venue provision referenced by § 106(c), 8 U.S.C. § 1252(b)(2), provides that a "petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings."

4. By Special Notice, issued on June 16, 2005, a copy of which is attached hereto, the Court of Appeals for the Third Circuit suggested, with respect to cases subject to transfer under the Real ID Act, "that

District Judges provide the parties an opportunity to stipulate to or brief the propriety of the transfer order."

IT IS, therefore, on this 30th day of September, 2005,

ORDERED that the Clerk of this Court shall serve a copy of this Order upon Petitioner, and shall serve a copy of this order and all other documents filed in this action on the Respondents; and it is further;

ORDERED that the parties shall, on or before Oct. 21, 2005, file with this Court a stipulation that Petitioner's claim challenging removal shall be transferred to the United States Court of Appeals for the Third Circuit, or show cause in writing why said claim should not be severed from this action and transferred to the Third Circuit, pursuant to 28 U.S.C. § 1631 and Section 106(b)(5) of the Real ID) Act.

/s/ Dennis M. Cavanaugh, U.S.D.J.

Date: September 30, 2005
Original: Clerk's Office
cc: All Counsel of Record
The Honorable Mark Falk, USM.J.
File

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ABDELHADI ABUSHEIKH,	:	Hon. Dennis M. Cavanaugh
Petitioner,	:	ORDER
v.	:	Civil Action No: 05-CV-1819 (DMC)
ALBERTO GONZALES, Attorney General; MICHAEL GARCIA, Assistant Secretary of Homeland Security — Bureau of Immigration and Customs Enforcement; JAMES JOHNSTON, District Director - Bureau of Immigration and Customs Enforcement; BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT,	:	
Respondents.		

This matter coming before the Court upon motion by Petitioner Abdelhadi Abusheikh ("Petitioner") for stay of removal; and the Court having carefully considered the record before it;

IT IS on this **6th** day of April, 2005,

ORDERED that Petitioner's application for a stay of removal is **denied** as this Court may not order a stay of an alien's removal

pending consideration of any claim with respect to voluntary departure pursuant to 8 U.S.C.A. § 1229(c)(f).

/s/Dennis M. Cavanaugh, U.S.D.J.

Date: April 6, 2005
Original: Clerk's Office
cc: All Counsel of Record
The Honorable Mark Falk, U.S.M.J.
File

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A72-433-013 - Newark Date: March 31, 2005

In re: ABU-SHEIKH, ABDEL HADI HUSSEIN

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT:
SOOBZOKOV, ASLAN T., Esquire

ORDER:

PER CURIAM. The respondent moves the Board pursuant to 8 C.F.R. § 1003.2 to reopen our decision dated September 17, 2004. This is the respondent's second motion to reopen, and it is number barred under 8 C.F.R. § 1003.2(c). Further, the only new information provided is that he has now attempted, and been unsuccessful, in obtaining travel documents to either Jordan or Israel. As we stated in our last decision denying reopening, his motion does not seek any relief that is within the jurisdiction of the Board or the Immigration Judge. The respondent's removal order became final upon his failure to voluntarily depart, and neither the Board nor the Immigration Judge have further jurisdiction over his proceedings, including matters relating to his post-removal custody. See generally 8 C.F.R. § § 1236.1(d), 1241.1(f), 1241.3, 1241.4, 1241.6(a) and (b). Accordingly, the motion is denied.

/s/ Anthony C. Moscato
FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A72-433-013 - Newark Date: January 13, 2005

In re: ABU-SHEIKH, ABDEL HADI HUSSEIN

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Soobzokov, Aslan, Esq.

ORDER:

PER CURIAM. The respondent moves the Board pursuant to 8 C.F.R. § 1003.2 to reopen our decision dated September 17, 2004. In our September 17, 2004, order we affirmed without opinion the Immigration Judge's decision which denied the respondent's application for cancellation of removal, granted him voluntary departure, and if he failed to depart as required, ordered him removed to Jordan, with an alternate order to Israel. The motion will be denied.

The respondent has not identified any relief which the Board of Immigration Appeals could grant if the case were to be reopened, or the Immigration Judge could grant if the case were to be reopened and remanded. The respondent presents evidence indicating that he may not be able to obtain travel documents for Jordan or Israel. The respondent does not indicate that there is a third country which he could travel to, so there is no need to reopen for the purpose of designating another, country for removal. Neither the Board nor an Immigration Judge has authority to grant a stay of removal on the grounds that there is no country which would permit the respondent to live there. See generally 8 C.F.R. § 1241.6(a) and (b).

Accordingly, the motion is denied.

/s/Anthony C. Moscato
FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Executive Office for Immigration Review

---

File: A72-433-013 - Newark Date: September 17, 2004

In re: ABU-SHEIKH, ABDEL HADI HUSSEIN

IN REMOVAL PROCEEDINGS APPEAL

ON BEHALF OF RESPONDENT: Soobzokov, Aslan, Esq.

ON BEHALF OF DHS: Charles Parker, Jr., Chief Counsel

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 1003.1 (e)(4).

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the alien is permitted to voluntarily depart from the United States, without expense to the Government, within 30 days from the date of this order or any extension beyond that time as may be granted by the district director. *See* section 240B(b) of the Immigration and Nationality Act; 8 C.F.R. § 1240.26(c), (f). In the event the alien fails to so depart, the alien shall be removed as provided in the Immigration Judge's order.

NOTICE: If the alien fails to depart the United States within the time period specified, or any extensions granted by the district director, the alien shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and shall be ineligible for a period

of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

/s/ Anthony C. Moscato
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Newark, New Jersey

File No.: A 72 433 013 February 21, 2003

In the Matter of)
ABDEL HADI HUSSEIN)
ABU-SHEIKH) IN REMOVAL PROCEEDINGS

Respondent)

CHARGE: Section 237(a) (1) (B), INA Act - overstay.

APPLICATIONS: Section 240A (b) (1) - cancellation of removal and adjustment of status for certain non-permanent residents; 240B of the Immigration and Nationality Act - voluntary departure.

ON BEHALF OF RESPONDENT:
Aslan Soobzoko, Esquire
1029 Main Street
Paterson, NJ 07533

ON BEHALF OF SERVICE:
Samuel Dutcher, Esquire
District Counsel
New Jersey

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 40-year-old male, a native and citizen of Jordan, who entered the United States on or about October 3, 1989 at New York, New York, as a non-immigrant visitor with authorization to remain in the United States for a temporary period not to exceed April 3, 1990. However, he remained beyond April 3, 1990, without authorization from the Immigration and Naturalization Service. Respondent was served with a charging

document, a Notice to Appear, dated March 14, 2002, alleging that he was an overstay in violation of Section 237(a) (1) (B), INA Act. The respondent, through counsel, admitted the allegations in the Notice to Appear and conceded that he was removable. The charges are proven, removability has been established.

The respondent seeks relief from removal, and petitions for cancellation of removal and adjustment of status of certain nonpermanent residents, 240A (b) (1). Respondent filed an application for cancellation of removal with the Court on June 18, 2002.

THE TESTIMONY

The respondent testified and submitted documentation on his behalf, a letter of employment, two tax returns, a job letter, and other documentation concerning his children, and his wife testified on his behalf.

The respondent testified he was born on December 8, 1962 in Aman, Jordan. He testified that he came to the United States on October 3, 1989, and he never left the United States, always remaining in the New York and Philadelphia area. The respondent and his mother, his father, his brother, although when he was born lived in Aman, the capital of Jordan, they moved to Palestine, which is presently Israel, and what is presently the West Banks, in Romolo, a city in the West Banks in Israel. He came there when he was four years of age, and lived there for 22 years. The respondent has an Israeli passport, and in the passport is an Israeli visa obtained while he was in the United States. The respondent has never been arrested or convicted of any crime.

The respondent has three U.S. citizen born children, and four children that came with him from the West Banks in 1989, and he came also with his wife. Neither the wife nor the four children, other than the three US. citizen children, the children born abroad, have any legal status in the United States. The three children are Fadi, a boy, 11 years of age, David or Dawad, a boy, 9 years of age, and Rosie, Rosemir, a girl, 7 years of age, all of whom are born in New York, all of whom are in good health.

The respondent has an Israeli passport, and avows that he cannot return to Jordan. He believes that he does not have the ability legally to return to Jordan. He does not believe he can get a document to return to Jordan with his Israeli passport, although he has never tried to obtain a Jordanian passport. He has heard that some friends and relatives have visited Jordan, but he knows of no one from the West Banks that has ever gone back to Jordan. The respondent's mother and father, brother and sister are residing at the present time in Israel on the West Banks.

The respondent was queried as to whether or not he would take his children with him, and he testified that if he had to leave the United States, his children would not go with him. He would not take them back to the West Banks. He only has a cousin here in the United States. He does not know where they would stay, but they would remain in the United States. The respondent testified he has no place to stay in the West Banks.

He testified that he has spoken with his relatives over there, and that he cannot live with them He testifies he has no home in the West Banks. There are no schools in the West Banks. There is no work in the West Banks. Life is very dangerous. You cannot walk the streets without violence from either the citizens of that area or Israel troops entering the area. You cannot buy food. He does not believe it would be fair to his children to go back. They cannot speak the language. They do not read and speak Arabic. He does not know how they would survive there.

The respondent has a child who goes to a special school Fadi. She goes to what appears to be a special ed private school in New York.

The respondent was questioned about his tax returns. He admitted that he worked for eight to nine years in the United States from 1990 until 1998 at various jobs in the New York metropolitan area and Philadelphia, but never filed a tax return on any dollar that he ever earned in the United States. The tax return for the year 1999 and 2001 were submitted, and the highest he has ever earned in either of these two years was $9,000. He was queried as to how he could support a family of seven children and a wife on

$9,000. He testified that his wife works. He indicated babysitting, but apparently her testimony is that she is a tailor, operating out of her home. The respondent also testified that two of his children work, Mohammed and Safra, and they do various jobs which help to support the family. The respondent also testified that he believes his wife received some public assistance over the years. He acknowledged that for a period of at least two years, which may be more than that, that the respondent lived apart from his wife. Apparently there was some sort of strife, and he worked in Philadelphia. She stayed in the New York metropolitan are with the children, and he supported the children and the wife by sending money from his position in Philadelphia.

The wife testified on behalf of her husband. She nor four of the children have any legal status in the United States. She has been with him here since 1989. She testified that they have been married 20 years, and they have three U.S. citizen children. All of the children are in good health, although Fadi does go to a special school for his speech. She testified that she and her husband have never spoken as to what would happen to them if the family had to face the husband's leaving the country either on an order of deportation or voluntary departure following this hearing. She testified that she would join him, she would not want to split up the children. She testified that she believes all of the children should go back with him. She testified all of her health and all of the children's health are good. She testified that she received welfare in various forms, food stamps and other type of welfare for 10 years of the 13 years in the United States.

FACTUAL ANALYSIS

The respondent seeks cancellation of removal for certain non-permanent residents. Section 240A(b) (1) is cancellation of removal and adjustment of status for certain non-permanent residents. The Attorney General may cancel removal of and adjust to the status of an alien lawfully admitted for residence, an alien who is inadmissible or deportable from the United States if the alien, (a) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application; (b) has been a person of good moral character during

such period; (c) has not been convicted of an offense under Section 212 (a) (2), Section 237 (a) (2) or Section 237 (a) (3); and (d) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent or child who is a citizen of the United States, or an alien lawfully admitted for lawful permanent residence.

The respondent has easily made the fact that he has never been convicted. He has easily made the burden that he has been here continuously. The most difficult issue for this Court, and any Court, I think necessarily in assessing whether cancellation of removal should be granted under the statute as amended in 1996, is it an exceptional and extremely unusual hardship for the respondent's three U.S. citizen children if the respondent had to be removed from the United States to another land.

This is a little bit of a tricky case because there are two lands involved here. The respondent has a passport from Israel. He, I believe has testified, that he was born in Jordan. His passport attests to that. That when he was a youngster, four years of age, his family moved to Romolo, or to the West Banks, and he has been in Israel ever since. I believe that he did come from the West Banks in 1989, came to the United States. But the respondent seems to believe that there is only one place that he can go. He seems to believe that the only place that he can return is to Israel, in spite of the fact that he is a Jordanian citizen, carrying an Israeli passport.

So I have to evaluate this case and analyze this case in the light of two different countries because the Country Reports on Human Rights Practices (Exhibit No. 24) seems to indicate that a Jordanian with full citizenship receives a passport that is valid for four years, and they talk about West Banks residents who are allowed to stay for two years, but they also talk about a citizen getting a national number, an ID card. Now I do not know of any act or any document that is shown to me that the respondent has not retained his Jordanian citizenship, even though he has been living in the West Banks. It is very possible that he still is for record purposes, a Jordanian citizen, having been born there. He has never gone to the Jordanian Government in the United States to obtain a definitive statement as to his status. He has never inquired as to whether or not he could

return to Jordan. Merely believing you cannot return in light of other evidence in the Country Reports does not prove to me that he cannot return to Jordan.

So I will analyze this case in terms of the hardship to the three U.S. citizen children generally, and if they had to return with him to Jordan, and if they had to return with him to Israel.

Now let us take a look at the case law. Case law is fairly clear. Matter of Andezola, 23 I&N Dec. 319 (BIA 2002) which spoke of children 11 and 6 years of age that had been here many, many more years than just the 13. I think we are talking about at least 15, 16 years in the United States. That was Mexico. And it was held that in spite of the economic depression or lack of economic opportunities in Mexico, the fact that educational opportunities were much less, the fact that it would be very difficult for children to relocate in that country, the Board held that it was not exceptional and extremely unusual hardship in the absence of any other factors such as health or anything else for these 11 and 6 year old children to return to Mexico. That is precedential Matter of Andezola and Matter of Monreal, Matter of Monreal is just really a follow through of the Pilch decision which was an eariier decision before the 1996 legislation. Matter of Monreal is 23 I&N Dec. 56 (BIA 2001). And the Pilch decision which really spoke about the fact that the reduction in economic situation, drastic economic conditions, economic detriment, schooling, these kinds of problems did not even amount to extreme hardship in Matter of Pilch, 21 I&N Dec. 627 (BIA 1996), even though we are dealing now with a much higher standard, exceptional and extremely unusual hardship.

But let us analyze the case based on the testimony of the respondent. The respondent argues the children are not going to get schooling. Well, clearly, they certainly are not going to get schooling if they go back to the West Banks. They will certainly get some schooling, and probably will have to learn Arabic because, according to the Country Reports, there is compulsory education up to the age of 16. And even if there are less educational opportunities for the children, that is not exceptional and extremely unusual hardship. Economic detriment has always been held as not sufficient as

extreme hardship, and certainly not exceptional and extremely unusual hardship.

And, frankly, I am not so sure that there is going to be any economic hardship because, and now we get into the second wildcard factor here, whether the wife goes or whether the wife stays. Assuming the wife does not go, and keeps the children here, if you believe the husband not wanting to take his family to the Middle East, then with the wife's working, two of the children working, the possibility of welfare, they are probably going to make a lot more than the $9,000 that this man declares, if that is legitimate. So economic hardship, if there is any, is not a basis for exceptional and extremely unusual hardship, whether it be the West Banks, or whether it be Jordan.

Now let us take the scenario, if you believe the husband, that the children are going to remain in the United States, he is not going to take them to the West Banks or the Middle East, and let us assume that he wife accedes to his wishes. The children are going to stay here. The children are going to get the same education. The children are probably going to be able to survive with the wife's work, the other two kids' work, and the welfare. She certainly had no problems taking welfare from the United States Government for 10 years. I am sure she can go back to doing that, or any other type of public assistance. So it is not going to be any terrible economic hardship compared to what he makes. And if he goes back to Jordan as an auto repair person, it is very possible he may be able to make some money and send it back. Frankly, if he has to go back to the West Banks, it is going to be hard to send anything back, I recognize that.

So taking that scenario, acceding to the husband's wishes, if the wife and children stay here, they are going to survive economically, the education will continue. And basically what we are going to have here is the emotional hardship. And clearly, there is no question the kids love the father. Clearly there is going to be an emotional hardship. How significant and serious it is, they certainly survive for at least two, or three, or four years in 1990s when the husband was separated from the wife and living in Philadelphia, so they have been through this before, and they seem to be tough enough kids, they may be able to survive the emotion. But I do recognize that there is

emotional hardship when the father leaves. But emotional hardship is not exceptional and extremely unusual hardship under the present state of the law.

Now let us analyze this under the two countries with an analysis of the two countries that are involved here. The respondent was born in Aman. The respondent has an Israeli passport. He states I am not a Jordanian. Well, frankly, I respectfully disagree if you are born in Jordan. It is possible that the Jordanians would recognize you as a Jordanian citizen. And he has produced no documentation to disabuse me of that. He has got nothing from the Government of Jordan to show that he is not a Jordanian citizen, to show that by living in Romolo for all these years, by having an Israeli passport automatically precludes you from being considered a Jordanian citizen. The respondent has the burden in this case to show me what the hardship is, and if he is going to argue that the hardship is going back to the West Banks, he has got to convince me that that is the only option, and that Jordan is not an option, and he has not done that in light of country conditions. It is equally passable that he could be considered a Jordanian citizen and that he could go back to Jordan with his wife and his children. The respondent has nothing to disabuse me of that other than his statement I cannot do it, and that is not good enough.

Now let us take both countries. Assuming, assuming he is a Jordanian citizen, assuming he can get some sort of passage and right to remain and live in Jordan, there is compulsory education. Jordan is a western looking nation, and I believe that if the kids had to go, i.e., if one were to believe the wife's version of what could happen, I do not believe it is exceptional and extremely unusual hardship for these healthy kids to return to Jordan. The only way that this case would be considered for exceptional and extremely unusual hardship if the respondent could convince me that there is no other option for these children but to go back to the West Banks. That means his wife has to override his decision, and they have to go back until he has no place to go in Jordan, and the only place he could go is the West Banks. And he has not convinced me that that is a possibility. One, because he wants the kids to stay here, and, two, the Country Reports indicate that there is a good possibility he could go back to Jordan. So he has not met his burden to convince me that it is exceptional

and extremely unusual hardship to him.
I believe that I have analyzed this case in three different dimensions. One, if the children go back or not; two, if the respondent can go back to Jordan; and three, he has no other options other than the West Banks. I believe if the children stay, there is nothing remotely resembling exceptional and extremely unusual hardship here. There would be enough funds, at least what he declares, at least testifies to, remaining in the United States to support the family compared to what he is making now. The hardship is emotional only to the children. If the wife and he and the children go back to Jordan, I believe it is not exceptional and extremely unusual hardship for them to survive in that country. I think they would do pretty well. And, finally, to repeat, the respondent has not convinced me that here is no other option than going back to the West Banks, and he has got that burden. He has not met the burden of exceptional and extremely unusual hardship.

Also equally difficult is the issue of good moral character. Frankly, it is hard for me to figure out how he can support seven children and a wife, paying the kind of rent that he is paying, on the salary that he has been making, and the money the wife makes. He has not filed taxes for nine years. He does not seem to think that that is an obligation. The wife casually and cavalierly says, well, I do not have a Social Security number, I do not have to pay taxes. Well, I respectfully disagree, whether you have a Social Security number or not, you are responsible to pay your fair share. However, in spite of his total dereliction and total disregard for the tax laws, he has never been arrested or convicted of any crime, and I will find that he has the requisite good moral character, and I will grant him the privilege of voluntary departure. And the following order will be entered.

ORDER

IT IS HEREBY ORDERED that the respondent's application for cancellation of removal for certain non-permanent residents is denied.

ORDER

IT IS FURTHER ORDERED that the respondent be granted the privilege of voluntary departure from the United States on or before April 24, 2003, or any extensions as may be granted by the District Director, and under whatever conditions the District Director may so direct.

IT IS FURTHER ORDERED that if the respondent fails to depart as required, the above order will be withdrawn without further notice of proceedings, and the following order will be entered. The respondent will be removed from the United States to Jordan with an alternate order to Israel.

/s/ HENRY S. DOGIN
Immigration Judge
February 21, 2003

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE HENRY S. DOGIN, in the matter of:

ABDEL HADI HUSSEIN ABU-SHEIKH A 72 433
013
Newark, New Jersey

is an accurate, verbatim transcript of the cassette tape as provided by the Executive Office for Immigration Review and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

/s/Lois D. Jones, transcriber
Free State Reporting, Inc.
1324 Cape St. Claire Road
Annapolis, Maryland 21401
(301) 261-1902

May 26. 2003
(completion date)

By submission of this CERTIFICATE PAGE, the Contractor certifies that a Sony BEC/T-147, 4-channel transcriber or equivalent, as described in Section C, paragraph C.3.3.2 of the contract, was used to transcribe the Record of Proceeding shown in the above paragraph.

IMMIGRATION COURT
970 BROAD STREET, ROOM 1135
NEWARK, NJ 07102

In the Matter of Case No. A72-433-013

ABU-SHEIKH, ABDEL
HADI HUSSEIN

Respondent IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Feb 21, 2003. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[X] Respondent's application for voluntary departure was granted until April 28, 2003 upon posting bond in the amount of $1,200.00 with an alternate order of removal to Jordan and another alternate to Israel.

[X] Respondent's application for cancellation of removal was (X) denied.

[X] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

Date: February 21, 2003

Appeal: Reserved Appeal Due By: March 24, 2003

/s/ HENRY S. DOGIN, Immigration Judge

Embassy Of The H.K. of Jordan
3504 International Drive N.W.
Washington, D.C. 20005

February 9, 2005

Deportation Officer/ Newark, NY
US Department Of Justice.
Immigration and Naturalization Service
970 Broad St. Room 1195
Newark, NJ 07102

Re: Abu-Sheikh, Abdel Hadi Hussein
A:#72-433-013

Dear Sir/Madam:

Please be advised that the request for a travel document for Mr. AbuSheikh, Abdel Hadi has been denied.

Regards,

/s/ Abeer G. Jarrar
Consul

CC/Aslan T. Soobzokov Attorney at Law, Paterson, NJ
Fax 973-279-7159

71

(2)

No.: 06-1607

In The

Supreme Court of the United States

ABDELHADI ABUSHEIKH,
(Alien No.: 043-247-552)

Petitioner,

V.

PETER D. KEISLER, ACTING ATTORNEY GENERAL; MICHAEL GARCIA, ASSISTANCE SECRETARY DEPARTMENT OF HOMELAND SECURITY-BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT; JAMES JOHNSTON, DISTRICT DIRECTOR BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT; BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents.

ON PETITION FOR A REHEARING TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A REHEARING

Aslan T. Soobzokov, Esq.
Attorney for Petitioner
1029 Main Street
P.O. Box 885
Paterson, New Jersey 07533
Phone: (973) 279-1622

FACTS

The Petitioner, Abdelhadi Abusheikh (Petitioner) lawfully entered the United States in 1989, and later was joined by his wife and children. In 2002 the Petitioner was arrested by Immigration and Customs Enforcement (ICE), for overstaying his visa. At Immigration Court the Petitioner sought a waiver to deportation under 8 U.S.C. § 1226 (b) (i), which was denied by an immigration judge.

An appeal filed with the Board of Immigration Appeals was denied as well. Thereafter, the Petitioner attempted to get a travel document from the Israeli Embassy. They denied his request. He then approached the Jordanian Embassy who also refused to grant the Petitioner a travel document. The reason both countries denied his request was because the Petitioner is a Palestinian from the West Bank. Both nations have policies that don't favor Palestinians.

After being informed that both countries listed on his deportation order would not accept his return, the Petitioner filed motions to both the BIA and the Immigration Court. The motions were to Reopen the Proceedings, these applications were summarily denied by Immigration Courts. No written opinions were rendered. No hearings were granted. An appeal filed with the District Court was transferred to the Third Circuit Court of Appeals based on the Real ID Act.

The Third Circuit Court of Appeals issued a written decision. In reading the decision however, it is obvious that the Court did not consider essential facts. In fact, many facts were not considered at all. These essential facts would have changed the ruling under the law.

ISSUE

WAS THE PETITIONER DENIED HIS RIGHT TO DUE PROCESS

The rehearing was filed because the Petitioner literally cannot depart the United States. The argument below should show that the Petitioner is stateless. Repeated pleas to the former INS, and the Courts below, were unheeded. The United States constitution has protected people like the Petitioner. The Petitioner seeks help from this Honorable Court to make sure his Constitutional Rights are protected.

We contended that the Petitioner was denied fundamental Due Process by the Court below for not granting a hearing. The motions filed to Reopen Proceedings were in accord with Court Rules. The motions were with merit but were summarily denied by the tribunals below that reviewed this matter.

This Court has stated that undocumented individuals are entitled to constitutional protections. That holding is being violated in this case. Denial of a hearing is a serious breach of fundamental constitutional principles.

The due process clause under the Fifth Amendment essentially guarantees individuals with a fair hearing. Based on the facts presented, which were know to the Court below, denial in granting the Petitioner a hearing was unconstitutional. He was entitled to a hearing under the law.

When an individual is ordered deported, there are two means for their removal from the United States. One may voluntary depart the country, or, the individual may be escorted out of the country. The Petitioner here was granted voluntary departure. He cannot comply with the

order because of his inability to travel. The Respondents had confiscated bails he posted because he did not depart the United States.

The Petitioner is unable to get travel documents. The Petitioner is a Palestinian who comes from the West Bank. He has not lived there in 17 years. To return to the West Bank the Petitioner must travel to Jordan or Israel. The Israelis, who had issued the travel document 17 years ago, refused to provide the Petitioner with a travel document which is the only means of returning to the West Bank via Israel.

Attempts were made by the Petitioner to seek travel documents from Jordan as well. He could try to enter the West Bank from there. The Jordanians refused to provide the travel document. The Petitioner's inability to return or depart the United States is not due to any fault on his part.

There is no ruling by this Honorable Court, or a statute enacted, that removes constitutional protections to undocumented individuals. The Right to Due Process, based on the circumstances in this case, are being disregarded.

Every Court either claimed that it lacks jurisdiction or simply had denied motions to reopen removal proceedings. Under this scenario the Petitioner was deprived of his Due Process rights. In previous stages of this litigation, the Respondent had not disputed the Petitioner's claim of being unable to depart the United States.

The deportation order has evolved into a document that essentially deprives the Petitioner of his Constitutional rights. The reality is that three countries, the United States, Jordan, and Israel do not want the Petitioner to reside in their respective nations. Therefore, he cannot comply with the deportation order because of impossibility.

In accordance with Rules of Court, the Petitioner filed all motions, documents, and appeals in a timely fashion. Regrettably, the Real ID Act removed a level of review for individuals, such as the Petitioner. The courts that have reviewed the Petitioner's case have consistently denied the Petitioner with a forum to bring forth his prayer for relief.

Subsequent to entry of the deportation order, no court had granted the Petitioner with an opportunity, or a forum, to explain his personal circumstances. The reality is that there is nothing that the United States can do in deporting Palestinians while Jordan and Israel maintain their war mode. Therefore, the Petitioner deserves to live with dignity, and peace of mind by not living in fear, in not having legal status.

It would seem that as a result of the recent mass immigration arrests, a ruling on the status of stateless individuals would be of assistance for future Courts to use as a guide. Under the circumstances of this case, the lower Courts knew of the Petitioner's situation, and refused to hear the motions he filed. This is troubling since Courts are the only place where individuals can turn to seek justice.

This petition for rehearing to the denial for a Writ of Certiorari was filed because the Petitioner had no alternative. He constantly faces the threat of arrest by Immigration. It is impossible for the Petitioner to comply with the Deportation order. The appendences herein contain evidence of the Petitioner's contentions.

The opinion from the Court of Appeals did not address the issues raised by the Petitioner. The analysis by the Court blatantly shows the Court misread the facts of this case, and misunderstood what relief was sought from the

Court. A misreading of an application for relief has a chilling effect on constitutional protections.

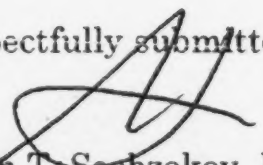
In the final analysis there is nothing the Petitioner can do to change his predicament. He attempted to seek relief from immigration Court and BIA who did not render decisions for their denials. As a result the Petitioner's road to appeals lead him to this Honorable Court's doors.

CONCLUSION

For all the foregoing reasons, the petitioner respectfully requests that the Supreme Court grant rehearing on this matter.

Dated: October 23, 2007

Respectfully submitted,



Aslan T. Soobzokov, Esq.
Attorney For Petitioner
1029 Main Street/P.O. Box 885
Paterson, New Jersey 07533

No.: 06-1607

In The

Supreme Court of the United States

ABDELHADI ABUSHEIKH,
(Alien No.: 043-247-552)

Petitioner,

V.

PETER D. KEISLER, ACTING ATTORNEY GENERAL; MICHAEL GARCIA, ASSISTANCE SECRETARY DEPARTMENT OF HOMELAND SECURITY-BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT; JAMES JOHNSTON, DISTRICT DIRECTOR BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT; BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents.

ON PETITION FOR A REHEARING TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CERTIFICATION OF COUNSEL

Aslan T. Soobzokov respectfully hereby certify and states as follows:

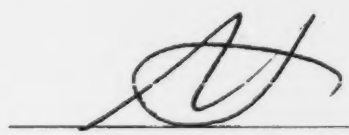
1. I am an attorney licensed to practice law in the State of New Jersey.

2. I represent the Petitioner, Abdelhadi H. Abu-Sheikh since the inception of his Immigration proceedings.

3. This Petition for Rehearing is presented in Good Faith and not for any delay.

I certify that the above statements made by me are true. I am aware that if any of the above statements made by me are willfully false, I am subject to punishment.

Date: October 23, 2007



Aslan T. Soobzokov